

ESTTA Tracking number: **ESTTA826675**

Filing date: **06/13/2017**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

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| Name | Life Covenant Church, Inc. |
| Granted to Date of previous extension | 06/24/2017 |
| Address | 4600 East 2nd Street Edmond, OK 73034 UNITED STATES |
| Attorney information | Jenna Johnson Crowe & Dunlevy 324 N. Robinson Suite 100 Oklahoma City, OK 73102 UNITED STATES jenna.johnson@crowedunlevy.com, ipmail@crowedunlevy.com Phone:4052357700 |

Applicant Information

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|------------------------|--|------------------------|------------|
| Application No | 87209606 | Publication date | 04/25/2017 |
| Opposition Filing Date | 06/13/2017 | Opposition Period Ends | 06/24/2017 |
| Applicant | Nintendo of America Inc. 4600 150th Avenue NE Redmond, WA 98052 UNITED STATES | | |

Goods/Services Affected by Opposition

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| <p>Class 009. First Use: 0 First Use In Commerce: 0</p> <p>All goods and services in the class are opposed, namely: Compact discs, optical discs, cartridges and memory cards containing music, puzzles, stories, and video games; Computergame programs; Computer game software; Computer programs for parental controls in the field of video games; Downloadable computer game programs; Downloadable computer game software; Downloadable computer programs; Downloadable electronic game programs; Downloadable electronic game software; Downloadable multimedia files containing computer games, music, puzzles, stories and video games; Downloadable music files; Downloadable video gameprograms; Downloadable video game software; Electronic game programs; Electronic game software; Electronic video game programs; Electronic video game software;Game programs for hand held video game apparatus; Game programs for video game apparatus; Video game cartridges; Video game discs; Video game memory cards; Video game memory devices, including, cartridges, compact discs, memory cards, and optical discs; Video game operating system software programs and utility programs; Video game programs; Video game software; Computer stylus pens; accessories for electronic video and computer game systems, namely, AC Adapters, chargers, earphones, microphones, power adapters; Electronic memory devices for use with electronic video and computer game systems</p> |
| Class 016. First Use: 0 First Use In Commerce: 0 |

All goods and services in the class are opposed, namely: Ballpoint pens; Book covers; Books regarding video games; Calendars; catalogs in the field of video games; Children's books; Children's activity books; Day planners; Erasers; Pens; Gift bags; Gift wrapping paper; Greeting cards; Invitation cards; magazines in the field of video games; Mechanical pencils; Memo pads; Office stationery; pamphlets in the field of video games; Paper banners; Paper gift cards; Pencil cases; Pencils; Pencil toppers; Photo albums; Photograph stands; Photographs; Posters; Scratch pads; Stickers; Sticker albums; Trading cards

Class 028. First Use: 0 First Use In Commerce: 0

All goods and services in the class are opposed, namely: Action figures; Accessories for action figures, namely, carrying cases and protective cases specially adapted for action figures; Board games; Card games; Cases for action figures; Computer game machines; Dolls; Electronic game consoles; Electronic game controllers and electronic game joysticks; Electronic game controllers with an integrated video display; Electronic game machines; Electronic memory devices for use with electronic video and computer game systems; Electronic video game machines for use with a monitor or television; Hand-held units for playing electronic games; Hand-held units for playing video games; Playing cards; Plush dolls; Plush toys; Promotional game cards; Puzzles; Sports balls; Stuffed toys; Toy action figures; Toy balloons; Toy key chains with and without sound device; Trading card games; Video game consoles; Video game controllers; Video game joysticks; Video game machines


Class 041. First Use: 0 First Use In Commerce: 0

All goods and services in the class are opposed, namely: Providing information about video games, including downloadable video games, non-downloadable video games and online game services by computer networks, handheld game apparatus and video game apparatus; Providing entertainment-related blogs, information and news on video games, computer games and related products, and on the video game and computer game industries; Providing non-downloadable images and photographs by computer networks, handheld game apparatus and video game apparatus; Providing non-downloadable movies about social, entertainment, cultural and general interest by computer networks, handheld game apparatus and video game apparatus; Providing non-downloadable pictures and photographs by computer networks, handheld game apparatus and video game apparatus; providing non-downloadable videos in the field of video games by computer networks, handheld game apparatus, and video game apparatus; Providing non-downloadable video games and video game samples by computer network, handheld game apparatus and video game apparatus; Providing online games and game samples by computer network, handheld game apparatus, and video game apparatus; providing online electronic publications, namely, online journals, and interactive online blogs featuring user generated or specified content in the field of video games


Grounds for Opposition

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| Priority and likelihood of confusion | Trademark Act Section 2(d) |
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Marks Cited by Opposer as Basis for Opposition


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| U.S. Registration No. | 3197701 | Application Date | 08/30/2005 |
| Registration Date | 01/09/2007 | Foreign Priority Date | NONE |
| Word Mark | SWITCH | | |
| Design Mark |  | | |

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| Description of Mark | NONE |
| Goods/Services | <p>Class 009. First use: First Use: 2005/05/31 First Use In Commerce: 2005/05/31 [pre-recorded CD's,] [video tapes,][laser disks,] [audio cassettes] [and DVD's featuring religious and religious educational subject matter]</p> <p>Class 016. First use: First Use: 2005/05/31 First Use In Commerce: 2005/05/31 publication resources, namely, pamphlets, brochures, and newsletters, for churches and individuals, in the fields of devotional materials, music, worship, outreach, curriculum, youth ministry, retreats, youth groups, bible study, inspiration, leadership training, spiritual growth, discipleship, evangelism, church facilities, church planning, congregational care, deacons, elders, funerals, giving and stewardship, sermons, and baptism</p> <p>Class 041. First use: First Use: 2005/05/31 First Use In Commerce: 2005/05/31 religious instruction services; Providing religious education services, namely providing classes, seminars, conferences, workshops and retreats in the field of religion and ministry and distributing course materials in connection therewith; entertainment services in the nature of organizing and producing live and recorded presentations relating to religious, spiritual and theological topics, namely, lectures, music concerts, theater productions, and musical productions; Entertainment services, namely, providing a television program in the field of religious and religious educational subject matter; [entertainment services, namely, providing a radio program in the field of religious and religious educational subject matter via a global computer network; Production of radio and television programs; Direction of making radio or television programs]</p> <p>Class 045. First use: First Use: 2005/05/31 First Use In Commerce: 2005/05/31 evangelical and ministerial services; providing information in the fields of religion and spirituality; counseling in the fields of religion and spirituality; youth and adolescent ministry services</p> |

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| U.S. Application No. | 87303178 | Application Date | 01/16/2017 |
| Registration Date | NONE | Foreign Priority Date | NONE |
| Word Mark | SWITCH | | |
| Design Mark |  | | |
| Description of Mark | NONE | | |
| Goods/Services | Class 009. First use: First Use: 2005/05/31 First Use In Commerce: 2005/05/31 Digital media, namely, downloadable audio and video recordings featuring religious subject matters | | |

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| U.S. Application No. | | Application Date | |
| Registration Date | NONE | Foreign Priority | NONE |

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| | | Date | |
| Word Mark | NONE | | |
| Design Mark | | | |
| Description of Mark | NONE | | |
| Goods/Services | | | |

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| U.S. Application No. | 87303251 | Application Date | 01/16/2017 |
| Registration Date | NONE | Foreign Priority Date | NONE |
| Word Mark | SWITCH | | |
| Design Mark |  | | |
| Description of Mark | NONE | | |
| Goods/Services | Class 025. First use: First Use: 2005/05/31 First Use In Commerce: 2005/05/31 Clothing, namely, t-shirts, shirts, hats, caps, visors, jackets, sweaters, vests, sweatshirts, pants, shorts, socks, footwear and wrist bands | | |

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| U.S. Registration No. | 3197702 | Application Date | 08/30/2005 |
| Registration Date | 01/09/2007 | Foreign Priority Date | NONE |
| Word Mark | SWITCH | | |

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| Design Mark |  |
| Description of Mark | NONE |
| Goods/Services | <p>Class 009. First use: First Use: 2005/05/31 First Use In Commerce: 2005/05/31 Pre-recorded CD's, [video tapes,] laser disks, [audio cassettes] and DVD's featuring religious and religious educational subject matter</p> <p>Class 016. First use: First Use: 2005/05/31 First Use In Commerce: 2005/05/31 [Publication resources, namely, pamphlets, brochures, and newsletters, for churches and individuals, in the fields of devotional materials, music, worship, outreach, curriculum, youth ministry, retreats, youth groups, bible study, inspiration, leadership training, spiritual growth, discipleship, evangelism, church facilities, church planning, congregational care, deacons, elders, funerals, giving and stewardship, sermons, and baptism]</p> <p>Class 041. First use: First Use: 2005/05/31 First Use In Commerce: 2005/05/31 Religious instruction services; Providing religious education services, namely providing classes, seminars, conferences, workshops and retreats in the field of religion and ministry and distributing course materials in connection therewith; entertainment services in the nature of organizing and producing live and recorded presentations relating to religious, spiritual and theological topics, namely, lectures, music concerts, theater productions, and musical productions; Entertainment services, namely, providing a television program in the field of religious and religious educational subject matter</p> <p>Class 045. First use: First Use: 2005/05/31 First Use In Commerce: 2005/05/31 Evangelical and ministerial services; providing information in the fields of religion and spirituality; counseling in the fields of religion and spirituality; youth and adolescent ministry services</p> |

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| Attachments | <p>78977758#TMSN.png(bytes) 87303178#TMSN.png(bytes) 87303251#TMSN.png(bytes) 78977773#TMSN.png(bytes) Notice of Opposition for NINTENDO SWITCH.pdf(123297 bytes)</p> |
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| Signature | /JJohnson/ |
| Name | Jenna Johnson |
| Date | 06/13/2017 |

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re United States Application Serial No. 87/209,606

Opposition No. _____

Filing Date: October 20, 2016

Mark: NINTENDO SWITCH

Published: April 25, 2017

LIFE COVENANT CHURCH, INC.,

Opposer,

v.

NINTENDO OF AMERICA, INC.,

Applicant.

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Opposition No.

NOTICE OF OPPOSITION

In the matter of the application for registration of the “NINTENDO SWITCH” trademark, United States Application Serial Number 87/209,606, filed October 20, 2016, by Nintendo of America, Inc., a Washington corporation, and published for opposition in the Official Gazette on April 25, 2017, Opposer, Life Covenant Church, Inc., believes that it would be damaged by such registration and hereby opposes registration of the mark for all goods and services in all classes set forth therein. The grounds for opposition are as follows:

1. Life Covenant Church, Inc. (“Opposer”) is an Oklahoma not for profit corporation with a principal place of business at 4600 2nd Street, Edmond, Oklahoma 73034.

2. Opposer is a well-known religious organization that owns and operates numerous church campuses throughout several states the United States. These church campuses use the “SWITCH” trademark for a variety of goods and services in association with Opposer’s youth program.

3. At least as early as May 31, 2005, Opposer began using in interstate commerce the distinctive “SWITCH” trademark in association with numerous goods and services in association with Opposer’s youth program.

4. On August 30, 2005, Opposer filed an application to register the “SWITCH” trademark, and the application matured into Registration No. 3,197,701 (the “Registration”), which is on the Principal Register for goods and services in International Classes 16, 41 and 45. The registration recites a date of first use of May 31, 2005. The currently registered goods and services are set forth below:

- Class 016 - publication resources, namely, pamphlets, brochures, and newsletters, for churches and individuals, in the fields of devotional materials, music, worship, outreach, curriculum, youth ministry, retreats, youth groups, bible study, inspiration, leadership training, spiritual growth, discipleship, evangelism, church facilities, church planning, congregational care, deacons, elders, funerals, giving and stewardship, sermons, and baptism.
- Class 041 - religious instruction services; providing religious education services, namely providing classes, seminars, conferences, workshops and retreats in the field of religion and ministry and distributing course materials in connection therewith; entertainment services in the nature of organizing and producing live and recorded presentations relating to religious, spiritual and theological topics, namely, lectures, music concerts, theater productions, and musical productions; Entertainment services, namely, providing a television program in the field of religious and religious educational subject matter; and
- Class 045 - evangelical and ministerial services; providing information in the fields of religion and spirituality; counseling in the fields of religion and spirituality; youth and adolescent ministry services.

5. At least as early as May 31, 2005, Opposer also began using its “SWITCH” mark in interstate commerce for additional goods; however, Opposer did not file applications to register the mark for these goods until January 16, 2017. The “SWITCH” mark has been used continuously on the following goods since the date of first use and are set forth in the applications listed below:

- Application Serial No. 87/303,178 - SWITCH - digital media, namely, downloadable audio and video recordings featuring religious subject matters in International Class 9;
- Application Serial No. 87/303,206 - SWITCH - pens, pencils, markers, decals, stickers, notebooks, note cards, envelopes, paper tablecloths; and pamphlets, brochures, postcards, study guides, curriculum and newsletters, all in the fields of devotional materials, music, worship, outreach, youth ministry, retreats, youth groups, bible study, inspiration, leadership, spiritual growth, discipleship, evangelism, giving and stewardship, sermons, and baptism in International Class 16; and
- Application Serial No. 87/303,251 - SWITCH - clothing, namely, t-shirts, shirts, hats, caps, visors, jackets, sweaters, vests, sweatshirts, pants, shorts, socks, footwear and wrist bands in International Class 25.

6. On October 20, 2016, Applicant filed an intent to use application, Application Serial No. 87/209,606, to register the “NINTENDO SWITCH” trademark in International Classes 9, 16, 28 and 41 for the numerous goods and services listed below:

- Compact discs, optical discs, cartridges and memory cards containing music, puzzles, stories, and video games; Computer game programs; Computer game software; Computer programs for parental controls in the field of video games; Downloadable computer game programs; Downloadable computer game

software; Downloadable computer programs; Downloadable electronic game programs; Downloadable electronic game software; Downloadable multimedia files containing computer games, music, puzzles, stories and video games; Downloadable music files; Downloadable video game programs; Downloadable video game software; Electronic game programs; Electronic game software; Electronic video game programs; Electronic video game software; Game programs for hand held video game apparatus; Game programs for video game apparatus; Video game cartridges; Video game discs; Video game memory cards; Video game memory devices, including, cartridges, compact discs, memory cards, and optical discs; Video game operating system software programs and utility programs; Video game programs; Video game software; Computer stylus pens; accessories for electronic video and computer game systems, namely, AC Adapters, chargers, earphones, microphones, power adapters; Electronic memory devices for use with electronic video and computer game systems

- Class 16 - Ballpoint pens; Book covers; Books regarding video games; Calendars; catalogs in the field of video games; Children's books; Children's activity books; Day planners; Erasers; Pens; Gift bags; Gift wrapping paper; Greeting cards; Invitation cards; magazines in the field of video games; Mechanical pencils; Memo pads; Office stationery; pamphlets in the field of video games; Paper banners; Paper gift cards; Pencil cases; Pencils; Pencil toppers; Photo albums; Photograph stands; Photographs; Posters; Scratch pads; Stickers; Sticker albums; Trading cards
- Class 28 - Action figures; Accessories for action figures, namely, carrying cases and protective cases specially adapted for action figures; Board games; Card games; Cases for action figures; Computer game machines; Dolls; Electronic game consoles; Electronic game controllers and electronic game joysticks;

Electronic game controllers with an integrated video display; Electronic game machines; Electronic memory devices for use with electronic video and computer game systems; Electronic video game machines for use with a monitor or television; Hand-held units for playing electronic games; Hand-held units for playing video games; Playing cards; Plush dolls; Plush toys; Promotional game cards; Puzzles; Sports balls; Stuffed toys; Toy action figures; Toy balloons; Toy key chains with and without sound device; Trading card games; Video game consoles; Video game controllers; Video game joysticks; Video game machines

- Class 41 - Providing information about video games, including downloadable video games, non-downloadable video games and online game services by computer networks, handheld game apparatus and video game apparatus; Providing entertainment-related blogs, information and news on video games, computer games and related products, and on the video game and computer game industries; Providing non-downloadable images and photographs by computer networks, handheld game apparatus and video game apparatus; Providing non-downloadable movies about social, entertainment, cultural and general interest by computer networks, handheld game apparatus and video game apparatus; Providing non-downloadable pictures and photographs by computer networks, hand held game apparatus and video game apparatus; providing non-downloadable videos in the field of video games by computer networks, handheld game apparatus, and video game apparatus; Providing non-downloadable video games and video game samples by computer network, handheld game apparatus and video game apparatus; Providing online games and game samples by computer network, handheld game apparatus, and video game apparatus; providing online electronic publications, namely, online journals, and

interactive online blogs featuring user generated or specified content in the field of video games

7. Opposer has invested a great deal of effort and expense in its “SWITCH” mark and has established valuable goodwill in the mark. Opposer’s “SWITCH” trademark has become a well-known trademark. By carefully controlling the quality of its goods and services, Opposer has built up an excellent reputation in association with its “SWITCH” trademark.

8. Opposer clearly has prior use of its “SWITCH” mark with respect to Applicant’s “NINTENDO SWITCH” application. Upon information and belief, based on Application Serial No. 87/209,606, Applicant did not begin using the “NINTENDO SWITCH” mark in commerce prior to October 20, 2016. Opposer has continuously used the “SWITCH” mark in interstate commerce since at least as early as May 31, 2005. Therefore, Opposer’s use and registration of the “SWITCH” mark precedes Applicant’s earliest possible priority date with respect to the “NINTENDO SWITCH” mark by at least ten years.

9. Opposer’s “SWITCH” trademark and Applicant’s “NINTENDO SWITCH” mark are similar as to sight, sound and connotation and create a similar commercial impression. Furthermore, the goods and services listed in the application for “NINTENDO SWITCH” are very similar and in some instances identical to the goods and services identified by Opposer’s “SWITCH” mark. In addition, upon information and belief, the customer base would be similar for both marks. As a result of the similarities, registration and use of “NINTENDO SWITCH” in connection with Applicant’s goods and services is likely to cause confusion among the public who are likely to believe that Applicant’s goods

and services and Opposer's goods and services are in some way associated, connected, sponsored, authorized or warranted.

10. If Applicant is allowed to register the "NINTENDO SWITCH" mark, it will obtain statutory rights to the mark that will conflict with and substantially degrade Opposer's rights in United States Registration No. 3,197,701 as well as Opposer's superior common law rights to its "SWITCH" mark. Opposer's goodwill and reputation will be jeopardized by Applicant's registration of the "NINTENDO SWITCH" trademark and Opposer will be harmed. Upon information and belief, consumers will be confused as to the source or origin of Applicant's goods and/or services or misled into mistakenly believing that there is a connection, affiliation or sponsorship of Applicant's goods and/or services by Opposer. Upon information and belief, Opposer will be damaged by the registration and use of the "NINTENDO SWITCH" mark.

CONCLUSION

WHEREFORE, Opposer respectfully requests that this Opposition be sustained and that registration of the "NINTENDO SWITCH" mark evidenced by United States Application Serial No. 87/209,606 be refused in its entirety and any and all other and further relief as is deemed just and proper.

Date: June 13, 2017

/JJohnson/
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**ATTORNEY FOR OPPOSER
LIFE COVENANT CHURCH, INC.**

CERTIFICATE OF TRANSMITTAL - ESTTA

Date of Deposit June 13, 2017

I hereby certify that this correspondence is being transmitted to the UNITED STATES PATENT AND TRADEMARK OFFICE via the ESTTA system on June 13, 2017.

/JJohnson/